

GETTING PAID BY INSURERS ON HEAVY DUTY RECOVERIES

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MY STORY

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COLLEGE OF LAW

LAW REVIEW MEMBER

HIGHEST GRADE AWARD RECIPIENT
(TWICE – CORPORATE FINANCE AND
EVIDENCE)

HONOR SOCIETY AT SOUTH TEXAS
COLLEGE OF LAW HOUSTON

WROTE 2 LAW REVIEW ARTICLES ON
TOWING LAW, 1 ON CORPORATE ENTITY
STRUCTURES

UT UNDERGRAD - PSYCHOLOGY

- STARTED MY CAREER AS A CORPORATE AND SECURITIES ATTORNEY WORKING IN TRANSACTIONS— MY FOCUS WAS IN THE HEALTHCARE INDUSTRY.
- I WROTE CONTRACTS AND CLOSED DEALS FOR MY FIRST 10 YEARS AS A LAWYER.
- I FINALLY REALIZED I REALLY DON'T LIKE WRITING CONTRACTS.
- GOT INTO TOWING LAW BECAUSE MY CAR WAS TOWED AND IT WAS A PARTICULARLY BAD TOW.
- THEN I MET FOLKS IN THE INDUSTRY – I REALIZED I COULD RELATE TO THEM, THAT THEY WERE HARD-WORKING, AND THAT THEY HAD A LOT OF BIG MECHANICAL TOYS I THOUGHT WERE COOL.
- NOW, I EXCLUSIVELY HANDLE TOWING AND HAZMAT PAYMENT DISPUTES AND INSURANCE CLAIM DISPUTES.
- I ENJOY MY LIFE MUCH MORE THAN WHEN I WAS A CORPORATE LAWYER.

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STARTING WITH THE UGLY TRUTH

- SOME RECOVERIES WILL NEVER GET PAID.
- SOME FIGHTS ARE NOT WORTH YOUR TIME
- MANY COMPANIES WILL ENCOURAGE YOU TO PURSUE DEAD-END CLAIMS.
- YOU WILL NOT CHANGE AN INSURANCE COMPANY'S BEHAVIOR BY YOURSELF.
- PREPARE FOR **ALL BATTLES** BUT FIGHT THE BATTLES THAT WILL GIVE YOU A RETURN ON YOUR INVESTMENT.



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OBSERVATIONS FROM MY WORK

- EVERY RECOVERY IS UNIQUE AND EVERY CLAIM IS UNIQUE
- EVERY INSURER / THIRD PARTY ADMINISTRATOR HANDLES THESE CLAIMS A LITTLE DIFFERENTLY.
- ADJUSTERS AND INSURERS CAN BE WRONG (AND VERY OFTEN **ARE WRONG**).
- IT IS VERY EASY FOR A TOWING/STORAGE COMPANY TO MESS UP A CLAIM.
- **THERE IS NO SILVER BULLET FOR ALL CLAIMS IN ALL STATES.**



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LET'S GET RIGHT INTO IT!

- CLAIMS START THE MOMENT YOU GET THE CALL.
- EVERY CLAIMS HAS THE POTENTIAL TO BECOME A LAWSUIT.
- REALIZING THIS AT THE BEGINNING WILL HELP YOU BUILD YOUR CLAIM FILE.
- TREAT EVERY TOW AS IF IT WILL BE DISPUTED.



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THREE PARTS OF EVERY INSURANCE CLAIM

- 1. THE EVIDENCE
- 2. THE CLAIM
- 3. THE OUTCOME



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EVIDENCE GATHERING – BEFORE, DURING, AND AFTER THE RECOVERY

- THIS IS HOW YOU BUILD YOUR CLAIM FILE.
- THE EVIDENCE TELLS THE STORY, SUPPORTS THE WORK YOU PERFORMED, AND SHOWS WHY YOU SHOULD BE PAID.
- YOU ARE IN THE BEST PLACE TO GATHER EVIDENCE – THE SCENE OF THE CRASH!!
- **WHO, WHAT, WHEN, WHERE, WHY, AND HOW?**



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WHO? ON SCENE

- DRIVER – NAME, ADDY, PHONE, EMAIL?
- TRACTOR OWNER – WHAT CAN YOU LEARN FROM LOOKING AROUND THE TRACTOR? (DOT/STATE INFO/LICENSE PLATE/OTHER IDENTIFYING NUMBERS)
- TRAILER OWNER – IF THERE IS ANYTHING WRITTEN ON ANY PART OF THE TRAILER, TAKE A PHOTO.
- MOTOR CARRIER / COMMON CARRIER (DOT/TXDMV)
- LESSORS/LESSEES
- LIENHOLDERS*
- INSURERS!!!! (PHYSICAL/LIABILITY/CARGO)
- ASK QUESTIONS AND WRITE DOWN ANSWERS.



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FINDING THE “WHO”

WEBSITES, STATE RESOURCES, FEDERAL RESOURCES, MVR, AND MORE.

- **SOSDIRECT** – TEXAS SECRETARY OF STATE’S WEBSITE – COSTS ABOUT \$1 PER SEARCH. OTHER STATES HAVE SIMILAR SEARCH FUNCTIONS (RESOURCES VARY BETWEEN STATES).
- **TEXAS COMPTROLLER** – TAXABLE ENTITY SEARCH – FREE!
- **SAFER/FMCSA** – LIST ALL MOTOR CARRIERS REGISTERED AS INTERSTATE MOTOR CARRIERS.
- **TxDMV** – TEXAS TRUCK STOP – LISTS COMMON CARRIERS REGISTERED FOR INTRASTATE OPERATION IN TEXAS.
- OUT OF STATE OWNER? START GOOGLING! YOU WILL FIND THAT EVERY STATE HAS A CORPORATIONS DIVISION OR SOS-SIMILAR WEBSITE WITH ENTITY INFORMATION.
- AD VALOREM TAX/CENTRAL APPRAISAL DISTRICT WEBSITES – BUSINESS PERSONAL PROPERTY RECORDS

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USING PHOTOGRAPHS TO FIND “WHO”

A PICTURE MAY BE WORTH 1,000 WORDS, BUT IT IS WORTH A HECK OF A LOT MORE IN DOLLARS.

Finding the Who often depends on the evidence collected at the crash scene.

If you are taking less than 25 pictures, you are not doing a thorough job.

EVERY angle of the tractor – use the clock method.

EVERY angle of the trailer – use the clock method.

EVERY number on the vehicle (USDOT, TxDMV, MC, individual ID number for internal tracking, VIN, License plate, and ANYTHING else you see)

It may not seem important to you, but it can be VERY important in the claim process (and to your lawyer).

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TIPS FOR TAKING THE BEST PHOTOS

IF YOU THINK YOU HAVE TAKEN ENOUGH PHOTOGRAPHS, TAKE 10-15 MORE.

- GET SEVERAL ESTABLISHING SHOTS – THESE ARE PHOTOS THAT TAKE IN THE ENTIRE CRASH SCENE – NORTH/SOUTH/EAST/WEST.
- PHOTOGRAPH ALL VEHICLES INVOLVED IN AN ACCIDENT FROM AS MANY ANGLES AS POSSIBLE.
- PHOTOGRAPH THE INTERIORS OF THE VEHICLES. GET PICTURES OF DEPLOYED AIRBAGS, SHATTERED GLASS, BLOOD STAINS, DEBRIS.
- PHOTOGRAPH SURROUNDING DAMAGE TO THE ROAD, FENCES, GRASS, TREES, AND PUBLIC OR PRIVATE PROPERTY.
- IF THE ACCIDENT CAUSED INJURIES, PHOTOGRAPH THE VICTIMS, INCLUDING CLOSE-UP SHOTS OF THE INJURIES.
- PHOTOGRAPH THE DEBRIS FIELD AS MUCH AS POSSIBLE.
- PHOTOGRAPH THE ACCIDENT SITE AND SURROUNDING ENVIRONMENT – STREET SIGNS, STOP SIGNS, TRAFFIC SIGNALS, WEATHER CONDITIONS, AND ROAD CONDITIONS.
- PHOTOGRAPH THE WORK YOU ARE DOING AS YOU ARE DOING IT.

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VIDEO / DRONE WORK

THE ONLY THING BETTER THAN PHOTOGRAPHS IS **PHOTOGRAPHS AND VIDEO.**

Video brings life to the crash scene.

Allows the adjuster to view the chaos and the danger from a first-person perspective.

Tells the adjuster that this is what you will show a jury if you are forced to litigate.

The more video, the better.

BACKS UP YOUR CLAIM FOR YOUR TIME!!!

Records contemporaneous discussions that may help identify parties that can pay for your services.

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[illegible]

OTHER ITEMS TO PHOTOGRAPH

CARGO MANIFEST, BILL OF LADING, ACCORD CERTIFICATE, DRIVER'S LICENSE

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- WHAT?
 - GET AS MANY DETAILS AS POSSIBLE.
 - TALK TO AS MANY FOLKS AS YOU CAN.
 - WHAT HAPPENED BEFORE/DURING/AFTER THE INCIDENT?
 - THESE STORIES CHANGE WHEN DRIVERS AND OWNERS SUBMIT THEM TO THE INSURER. GET THE STORY AT THE TIME OF THE CRASH.
 - FACTORS LEADING TO THE CRASH CAN BE AS IMPORTANT AS THE DESCRIPTIONS OF THE WORK YOU DID.

WHEN?

TIMING IS EVERYTHING.

- CRASH REPORT CONTAINS SOME INDICATIONS
- IF YOUR CAMERAS HAVE TIME STAMPS, AVAILABLE THERE.
- CRUISER CAMS WITH TIME STAMPS
- AVAILABLE FROM BODY CAMS
- IF YOU ARE NOT TRACKING YOUR TIME WITH 100% DILIGENCE AND ACCURACY, IT WILL COME BACK AND BITE YOU.
- INSURANCE COMPANIES LOVE IT WHEN THEY FIND INCONSISTENCY BETWEEN YOUR BILL AND OTHER RECORDS.

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WHERE?

WHERE DID YOU DO THE WORK?

- AT THE CRASH SCENE?
- AT THE VSF?
- TAKING TO DUMP?
- CALLED OUT A CRUSHER?
- CROSS-LOADING?
- WHERE MATTERS – IF IT IS AS THE SCENE VERSUS AT THE VSF, CAN MAKE THE DIFFERENCE BETWEEN A COVERED AND A NON-COVERED CLAIM.

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THE CLINCHER.

- WHY IS PROBABLY THE MOST IMPORTANT QUESTION.
- WHY DID YOU TOW THE VEHICLES?
 - OFFICER INSTRUCTION? WHO GAVE THE ORDER?
 - OWNER INSTRUCTION? MIGHT MAKE THIS A CONSENT TOW.
- WHY WAS EACH ACTION IN YOUR RECOVERY NECESSARY?
 - OFFICER ORDERS, COUNTY/STATE LAWS OR POLICIES, ROTATION CONTRACT TERMS, ETC.
- WHY DID YOU NEED THE PERSONNEL / VEHICLES / EQUIPMENT ON THE SCENE?
 - AUDIT / DISPUTE COMPANIES CAN BE A PAIN.
- IF YOU CANNOT EXPLAIN WHY SOMETHING WAS NECESSARY, THE INSURER WILL NOT WANT TO PAY.

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PART II – THE CLAIM

THIS IS WHERE THE RUBBER MEETS THE ROAD IN GETTING PAID.

- CLAIMS BEGIN THE MOMENT YOU GET THE CALL.
- YOU NEED A COMPREHENSIVE CLAIM FILE WITH ALL EVIDENCE OF YOUR WORK ON EVERY RECOVERY.
 - PHOTOGRAPHS
 - VIDEO
 - NOTES ON FACTS GATHERED FROM SCENE
 - SUPPORTING EVIDENCE
 - SUBCONTRACTOR INVOICES, HAZMAT INVOICES, DISPOSAL INVOICES
 - MVRs
 - NOTICE LETTERS (IN TX THESE MUST BE PERFECT)
 - OFFSETS AND PAYMENTS APPLIED TO BALANCE

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INSURANCE BASICS – GOING BACK TO SCHOOL

- TERMS YOU NEED TO KNOW:
 - ADJUSTER
 - CLAIM
 - PHYSICAL DAMAGE COVERAGE
 - LIABILITY COVERAGE
 - CARGO COVERAGE



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THE ADJUSTER

- A PERSON WHO INVESTIGATES CLAIMS AND RECOMMENDS SETTLEMENT OPTIONS BASED ON (I) ESTIMATES OF DAMAGE AND (II) INSURANCE POLICIES HELD.
 - MOST ARE NOT ATTORNEYS, SOME ARE.
 - ADJUSTERS TYPICALLY KNOW LITTLE TO NOTHING ABOUT HEAVY DUTY TOWING AND RECOVERY WORK.
 - THE ONES WHO TALK ABOUT "TOWING AND STORAGE LIMITS"
 - MOST THINK ALL YOU DID WAS HOOK AND GO.

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THE THIRD-PARTY ADMINISTRATOR “TPA”

- A THIRD-PARTY ADMINISTRATOR IS A COMPANY THAT PROVIDES OPERATIONAL SERVICES SUCH AS CLAIMS PROCESSING MANAGEMENT UNDER CONTRACT TO ANOTHER COMPANY.
- INSURANCE COMPANIES AND SELF-INSURED COMPANIES OFTEN OUTSOURCE THEIR CLAIMS PROCESSING TO THIRD PARTIES. THUS, SUCH COMPANIES ARE OFTEN CALLED THIRD-PARTY CLAIMS ADMINISTRATORS.
 - MOST ARE PAID HOURLY WITH A BONUS SYSTEM.

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THE CLAIM

- A REQUEST FOR INSURER REMITTANCE OF PAYMENT DUE TO LOSS INCURRED AND COVERED UNDER THE POLICY AGREEMENT.
 - **FIRST-PARTY CLAIM** – THE INSURED SEEKS COMPENSATION FOR THE LOSS FROM THE INSURER.
 - **THIRD-PARTY CLAIM** – A LOSS WHERE THE INJURY AND LOSSES ARE ALLEGEDLY CAUSED BY THE INSURED BUT CAUSED TO A PERSON OUTSIDE THE CONTRACTUAL INSURANCE RELATIONSHIP.



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PHYSICAL/COLLISION DAMAGE COVERAGE

- A SPECIFIC TYPE OF INSURANCE COVERAGE.
- SPECIFICALLY, MOTOR VEHICLE INSURANCE COVERAGE THAT INSURES AGAINST MATERIAL DAMAGE TO THE INSURED'S VEHICLE.
- COMMERCIAL INCLUDES PHYSICAL DAMAGE POLICIES THAT COVER VEHICLES USED IN CONNECTION WITH BUSINESS, COMMERCIAL ESTABLISHMENTS, ACTIVITY, EMPLOYMENT, OR ACTIVITIES CARRIED ON FOR GAIN OR PROFIT.

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LIABILITY COVERAGE (BODILY INJURY / PROPERTY DAMAGE)

- INSURANCE THAT COVERS FINANCIAL LOSS BECAUSE OF LEGAL LIABILITY FOR MOTOR VEHICLE RELATED INJURIES (BODILY INJURY AND MEDICAL PAYMENTS) OR DAMAGE TO THE PROPERTY OF OTHERS CAUSED BY ACCIDENTS ARISING OUT OF OWNERSHIP, MAINTENANCE OR USE OF A MOTOR VEHICLE (INCLUDING RECREATIONAL VEHICLES SUCH AS MOTOR HOMES).
- COMMERCIAL ENCOMPASSES ALL MOTOR VEHICLE POLICIES THAT COVER VEHICLES THAT ARE USED PRIMARILY IN CONNECTION WITH BUSINESS, COMMERCIAL ESTABLISHMENTS, ACTIVITY, EMPLOYMENT, OR ACTIVITIES CARRIED ON FOR GAIN OR PROFIT.

ACORD 201 CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an additional insured, the policy must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, other policies may apply in subrogation. A statement on this certificate does not confer rights to the certificate holder in the absence of such endorsement(s).

COVERAGES

POLICY INFORMATION		COVERAGES		VEHICLE INFORMATION	
INSURER	TYPE	COVERAGE	AMOUNT	VEHICLE TYPE	VEHICLE INFORMATION
INSURER 1	TYPE 1	BODILY INJURY		VEHICLE 1	VEHICLE INFORMATION 1
INSURER 2	TYPE 2	PROPERTY DAMAGE		VEHICLE 2	VEHICLE INFORMATION 2
INSURER 3	TYPE 3	MEDICAL PAYMENTS		VEHICLE 3	VEHICLE INFORMATION 3
INSURER 4	TYPE 4			VEHICLE 4	VEHICLE INFORMATION 4
INSURER 5	TYPE 5			VEHICLE 5	VEHICLE INFORMATION 5
INSURER 6	TYPE 6			VEHICLE 6	VEHICLE INFORMATION 6
INSURER 7	TYPE 7			VEHICLE 7	VEHICLE INFORMATION 7
INSURER 8	TYPE 8			VEHICLE 8	VEHICLE INFORMATION 8
INSURER 9	TYPE 9			VEHICLE 9	VEHICLE INFORMATION 9
INSURER 10	TYPE 10			VEHICLE 10	VEHICLE INFORMATION 10

FOR A COMPLETE LIST OF COVERAGES, SEE THE POLICY. THIS CERTIFICATE IS NOT VALID WITHOUT THE POLICY. THIS CERTIFICATE IS NOT VALID WITHOUT THE POLICY. THIS CERTIFICATE IS NOT VALID WITHOUT THE POLICY.

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CARGO INSURANCE



- PROVIDES INSURANCE ON THE FREIGHT OR COMMODITY HAULED BY A FOR-HIRE TRUCKER. IT COVERS LIABILITY FOR CARGO THAT IS LOST OR DAMAGED DUE TO CAUSES SUCH AS FIRE, COLLISION, OR STRIKING OF A LOAD.
- IF YOUR LOAD IS ACCIDENTALLY DUMPED ON A ROADWAY OR WATERWAY (REMOVAL EXPENSES COVERAGE), CARGO COVERAGE PAYS FOR THE COST TO REMOVE DEBRIS OR EXTRACT POLLUTANTS CAUSED BY THE DEBRIS.

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LIABILITY VERSUS PHYSICAL DAMAGE VERSUS CARGO

- EACH POLICY HAS SPECIFIC AREAS OF COVERAGE WITH SPECIFIC LIMITATIONS.
- YOU NEED TO UNDERSTAND HOW EACH POLICY WORKS IN RELATION TO THE WORK YOU PERFORMED ON THE RECOVERY.
- SOME WRECKS HAVE ALL, SOME HAVE ONE, SOME HAVE **NONE**.
- IF YOU DON'T KNOW WHO YOU ARE DEALING WITH, YOU MAY INADVERTENTLY RELEASE VALID CLAIMS.
- MANY PAYMENT DISPUTES ARISE FROM A FAILURE TO RECOGNIZE WHICH INSURER THE TOWING COMPANY OR VSF IS DEALING WITH.
- MAKE SURE YOU UNDERSTAND WHETHER AN INSURER COVERS JUST ONE OF THESE LINES, MORE THAN ONE, OR ALL OF THEM.
- MANY INSURERS WILL SEEK A COMPLETE RELEASE OF ALL CLAIMS AGAINST ALL PERSONS THEY INSURE FOR "KNOWN AND UNKNOWN" CLAIMS. THIS CAN LIMIT YOUR ABILITY TO SEEK PAYMENT FROM OTHER INSURERS.

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CHARACTERIZING THE RECOVERY

DIFFERENCES BETWEEN SPEAKING TOWING
AND SPEAKING INSURANCE

- INSURANCE ADJUSTERS HAVE NO IDEA WHAT YOU DO.
- INSURANCE ADJUSTERS HAVE NO CONCEPT OF A TOW.
- INSURANCE ADJUSTERS ARE NOT AGAINST YOU. TRUE STORY.
- YOU NEED TO EDUCATE THE ADJUSTER.
- THIS BEGINS BY KNOWING YOUR WORK, THE LAWS OF YOUR STATE, THE COVERAGE AVAILABLE, AND BEING ABLE TO BACK IT UP.

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WHAT IS TOWING?

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tow verb

Save Word

\ 'tō \

towed; towing; tows

Definition of **tow** (Entry 1 of 4)

transitive verb

: to draw or pull along behind : [HAUL](#)
// tow a wagon

intransitive verb

: to move in tow

recover verb (1)

Save Word

re-cov-er | \ ri-'kə-vər \

recovered; recovering \ ri-'kə-və-rīŋ \, -'kəv-rīŋ \

Definition of **recover** (Entry 1 of 2)

transitive verb

1 : to get back : [REGAIN](#)

2 a : to bring back to normal position or condition
// stumbled, then *recovered* himself

b *archaic* : [RESCUE](#)

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WHY DOES THE CLASSIFICATION OF THE WORK MATTER

- WHAT THE TOW IS CLASSIFIED AS IS MORE AND MORE IMPORTANT
- SEPARATION OF TOWING BILLS AND STORAGE BILLS FROM RECOVERY, HAZMAT, AND ANY OTHER TYPE OF SERVICE PERFORMED
- INSURED CLAIM VERSUS PRIVATE CLAIM AGAINST OWNER, CARRIER, INSURER.

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